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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

DAVID BRIGHAM YOUNG, by and
through is Guardian Ad Litem Mercedes
Broughton,

Plaintiff,

v.

MERCURY CASUALTY CO, et al.,

Defendants.

2:09-CV-2399 JCM (LRL)

ORDER

Presently before the court is defendant's motion to dismiss or in the alternative, to sever claims for bad faith, or in the alternative to bifurcate and stay claims for bad faith (Doc. #39). Plaintiff filed an opposition (Doc. #40) and defendant filed a reply (Doc. #41). Additionally, the parties submitted a joint stipulation and order to bifurcate (Doc. #45).

Federal courts apply federal procedure in diversity cases. *Erie Railroad v. Tomkins*, 304 U.S.64, 78-79 (1938). Bifurcation is procedural, and this court relies on Federal Rule of Civil Procedure 42(b) to determine whether bifurcation is appropriate. Federal Rule of Civil Procedure 42(b) provides that "[f]or convenience, to avoid prejudice, or to expedite and economize, the court may order a separate trial of one or more separate issues, claims, crossclaims, counterclaims, or third-party claims." The court has broad discretion in determining whether to bifurcate claims. *Hirst v. Gertzen*, 676 F.2d 1252, 1261 (9th Cir. 1982).

This case arises out of an automobile accident that occurred on April 13, 2006. On January

1 13, 2010 plaintiff, David Brigham Young, filed a first amended complaint against his uninsured
2 motorist ("UIM") carrier, defendant Mercury Casualty Company alleging: 1) breach of contract, 2)
3 unfair claims practice, and 3) bad faith. Defendant now seeks to bifurcate and stay plaintiff's claims
4 for bad faith.

5 Whether a plaintiff can bring a bad faith action independently of a breach of contract claim
6 is a question of substantive law, and is governed by Nevada state law. *See Erie*, 304 U.S. at 78. The
7 Nevada Supreme Court has held that even when a contract has not been breached, a plaintiff "may
8 still be able to recover for breach of the implied covenant of good faith and fair dealing, [if] one
9 party deliberately contravenes the intentions and spirit of the contract..." *Hilton Hotels v. Butch*
10 *Lewish Products*, 107 Nev. 226, 232 (1991); *see also American Excess Ins. Co. v. MGM Grand*
11 *Hotels, Inc.*, 102 Nev. 601, 504 (1986) (holding that failing on a contract claim precludes bad faith
12 action only when interpretation of the contract was reasonable.) Whether or not a party breached the
13 letter of a contract, "the implied covenant of good faith is an obligation independent of the
14 consensual contractual covenants." *Morris v. Bank of America Nevada*, 110 Nev. 1274, 1278 (1994).

15 Here, this court finds bifurcation does not support judicial economy. Resolving plaintiff's
16 breach of contract claim would not dispose of the entire case. Plaintiff's failure to prevail on his
17 contract claim would not categorically preclude him from pursuing his bad faith action against
18 defendant. A unified trial would better serve judicial economy because the evidence and witnesses
19 necessary to prove the breach of contract and bad faith claims are identical. Furthermore, a unified
20 trial would not prejudice the defendant.

21 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that defendant's motion to
22 dismiss or in the alternative, to sever claims for bad faith, or in the alternative to bifurcate and stay
23 claims for bad faith (Doc. #39) be, and the same hereby is DENIED.

24 DATED July 8, 2010.

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27 UNITED STATES DISTRICT JUDGE
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